

Chapter 173-539A WAC

UPPER KITTITAS EMERGENCY GROUND WATER RULE

NEW SECTION

WAC 173-539A-010 Purpose. This chapter establishes a partial withdrawal of ground water within a portion of WRIA 39 in Kittitas County, Washington for purpose of implementing a memorandum of agreement (MOA) entered with Kittitas County on April 7, 2008. The partial withdrawal and associated restrictions are designed to minimize the potential for new uses of water to negatively affect flows in the Yakima River and its tributaries but do so in a way that minimizes effects on economic development. Based on technical investigations comprising the hydrologic investigation and characterization report, the potential for impairment of existing water rights can be considered during Kittitas County's review of certain land use applications along with any other environmental impacts. Mitigation or other risk management techniques can also be considered.

NEW SECTION

WAC 173-539A-020 Authority. RCW 90.54.050 provides that when sufficient information and data are lacking to allow for the making of sound decisions, the department of ecology (ecology) may withdraw various waters of the state from additional appropriations until such data and information are available after consulting with the appropriate standing committees of the legislature. In 2007, a private organization in Kittitas County, Aqua Permanente, submitted a petition requesting that ecology unconditionally withdraw all unappropriated ground water in Kittitas County until sufficient information is known about potential effects from such wells on senior water rights and stream flows. Ecology consulted with standing committees of the house of representatives and senate of the Washington state legislature with respect to the petition and proposed withdrawal. Subsequently, ecology rejected the proposed unconditional withdrawal, and alternatively, entered into the MOA with Kittitas County, which this partial withdrawal is

intended to implement.

NEW SECTION

WAC 173-539A-030 Definitions. "Adjacent" means all lots or parcels that:

- (a) Have any common boundary;
- (b) Are separated only by roads, easements, or parcels in common ownership; or
- (c) Are within five hundred feet at the closest boundaries.

"Application" means a request for approval by Kittitas County as required for a subdivision, short subdivision, large lot subdivision, administrative segregation, one time split, binding site plan, boundary line adjustment, performance based cluster plat, or use of intervening ownership.

"Common ownership" means any type of ownership interest held by an applicant for a new residential development in the adjacent lands or the lands in question or a contractual arrangement between the applicant and any owner of adjacent lands with respect to the joint development of such lands and that of the new residential development. A contractual arrangement for joint development includes contracts providing for shared use of services for permitting, engineering, architecture, environmental review, land clearing or preparation, or building of roads, structures, or common water or sewer infrastructure.

"Exemption" or "ground water exemption" means the exemption from the permit requirement for a withdrawal of ground water provided under RCW 90.44.050.

"Group use" means use of the ground water exemption for two or more lots that are part of a proposed new residential development. A group use also includes use of the exemption for all lots or parcels that are adjacent and held in common ownership with the proposed new residential development if use of the exemption has commenced or is planned to commence on the adjacent lands within five years before or after the date the current application was filed. The term "group use" is referred in the MOA between Kittitas County and ecology by the term "development."

"Hydrologic investigation and characterization report" means the report prepared by a licensed hydrogeologist addressing the elements identified in WAC 173-539A-060.

"Lands" refers to both singular "land" and plural "lands."

"New residential development" means any division of land involving an application that vested after the effective date of this rule.

"New use of the ground water exemption" means a use commenced on or after the effective date of this rule.

"Upper Kittitas County" is the area of Kittitas County delineated in WAC 173-539A-990.

NEW SECTION

WAC 173-539A-050 Interim management measures. (1) New residential development within upper Kittitas County relying in part or whole on a new use of the ground water exemption for authority to withdraw public ground water must not use more than a maximum of 5,000 gallons per day (gpd) from the ground water exemption for domestic and irrigation purposes associated with all lots and lands that are part of the proposed development or a larger group use. At the time of filing an application for a new residential development, the applicant shall file a sworn statement with ecology and Kittitas County, which shall be recorded against the lands in question, declaring as to whether the applicant has commenced or plans to commence use of the exemption on any adjacent lands in common ownership within the five years before or after the filing of the application. If the sworn statement declares that no use of the exemption will occur on such lands within the next five years, no use of the exemption for domestic or irrigation purposes shall occur on such lands within that period.

(2) In determining compliance with the 5,000 gpd exemption limit for a new residential development, each lot will be assumed to use a minimum of 1,250 gpd for domestic and irrigation purposes, unless a condition is recorded as a covenant to use a lesser amount. If the exemption will not be used to provide water for irrigation, each lot will be assumed to use a minimum of 350 gpd for domestic purposes.

(3) New residential structures on parcels less than ten acres that were created after March 28, 2002, within upper Kittitas County and that will rely on a new use of the ground water exemption shall be limited to 1,250 gpd of water for all domestic and irrigation uses from the exemption. However, such use shall be further restricted if more stringent limits are contained in conditions on water use placed on the plat that created the lot or specified in the permit/approval of the public water system that is intended to serve the lot. This provision does not restrict an owner from using water from another lawful water right for additional quantities.

(4) New residential structures on parcels that were created on or before March 28, 2002, within upper Kittitas County and that will rely on a new use of the ground water exemption shall be limited to 5,000 gpd for all exempt domestic and irrigation uses. However, such use shall be further restricted if more stringent limits are contained in conditions on water use placed on the plat that created the lot or specified in the permit/approval of the public water system that is intended to serve the lot or if other limitations of law restrict such use.

NEW SECTION

WAC 173-539A-060 Hydrogeologic assessment. If required by Kittitas County for a new residential development relying in whole or part on a new use of the ground water exemption, a hydrogeologic assessment, signed by a licensed hydrologist, based on existing, available information, unless new information is required by Kittitas County, shall be presented to Kittitas County and ecology in the form of a written report. The report shall be submitted at such time to enable it to be used in connection with review under the State Environmental Policy Act. The required elements of the report are as follows:

(1) Scope of the proposal including the location, proposed water source(s), water use amounts and the timing of the proposed use.

(2) General description including the local geologic, hydrogeologic, and hydrologic setting, identification of surface water and ground water features, water sources, recharge/discharge characteristics and surface water and ground water interactions.

(3) Site-specific description.

(4) Inventory and description of all state issued ground water rights, claims, and exempt wells located within a one year and five years area of pumping influence.

(5) Inventory and description of all state issued surface water rights and surface water claims located within a one year and five years area of pumping influence.

(6) Identification and description of existing surface water or ground water rights which may be adversely affected as a result of the ground water withdrawals by the proposed project well(s).

(7) The licensed hydrogeologist must include a professional opinion responding to the potential of the proposal to create impacts to the natural and built environment including, but not limited to, any reduction of surface water flows.

(8) A statement of the limitations regarding the intended use of the report, including scope, extent, and available data.

NEW SECTION

WAC 173-539A-070 Measurement and reporting of water use. (1) Each source of water within upper Kittitas County for a new use of the ground water exemption for residential purposes shall be equipped with a meter in accordance with WAC 173-173-100 and as prescribed by Kittitas County. "Residential purposes" includes all domestic use and irrigation associated with the parcel in question.

(2) Metering data must be recorded on the last day of each reporting period and then reported within thirty days to Kittitas County and ecology. The following table shows the reporting periods and the due dates for each metering report:

Reporting Period	Report Due
October 1 - March 31	April 30
April 1 - June 30	July 30
July 1 - July 31	August 30
August 1 - August 31	Sept. 30
Sept. 1 - Sept. 30	October 30

NEW SECTION

WAC 173-539A-080 Expedited processing of pilot water bank transactions. (1) Trust water right applications and associated surface water or ground water applications may receive priority processing to meet the general needs of the public for domestic, group domestic and municipal purposes of use within the Yakima River basin.

(2) An application for a new surface water right, or a ground water right hydraulically related to the Yakima River, may be processed when accompanied by a trust water rights transaction that represents the same consumptive use impact during the irrigation season, as measured at Yakima River at Parker. Applications will be processed in accordance with PRO-1000, Chapter 1, supplemented by the following additional requirements:

Ecology may process an application for a new surface or ground water permit when it is accompanied by conveyance of a pre-1905 water right to ecology to create a trust water right.

(a) If accepted into the trust water right program, ecology may then assign the trust water right established under chapters 90.38 and 90.42 RCW to serve as mitigation for impacts to "total water supply available (TWSA)."

(b) The application must request the full amount of the intended diversion or withdrawal amount. Assignment of a portion of a trust water right must, at a minimum, represent the estimated consumptive use for the use(s) requested on the application.

(c) The application to withdraw ground water must be reviewed to ensure that ground water is available from the aquifer without detriment or injury to existing rights, considering the mitigation offered.

(d) If the trust water right is not located in the same subbasin as the source described on the new application, or if it is located downstream from the source described on the new application, the permit shall be conditioned to ensure that existing surface water rights, including instream flow water rights, and ground water rights within the subbasin are not impaired. If impairment would result, the application must be modified, the permit conditioned to prevent impairment, or the permit denied.

(e) Each permit must be conditioned to ensure that the relationship to the trust water right is clear and that any limitations in the trust water right are accurately reflected.

NEW SECTION

WAC 173-539A-090 Technical assistance and enforcement. (1) To obtain compliance with this chapter, ecology and Kittitas County may prepare and distribute technical and educational information regarding the scope and requirements of this chapter to the public. This is intended to assist the public in complying with the requirements of their water rights and applicable water laws.

(2) When ecology determines that a violation of this rule has occurred, it shall first attempt to achieve voluntary compliance. An approach to achieving this is to offer information and technical assistance to the person, in writing, identifying one or more means to accomplish the person's purposes within the framework of the law.

(3) To obtain compliance and enforce this chapter, ecology may impose such sanctions as appropriate under authorities vested in it, including, but not limited to, issuing regulatory orders under RCW 43.27A.190; and imposing civil penalties under RCW 43.83B.336, 90.03.400, 90.03.410, 90.03.600, 90.44.120 and 90.44.130.

NEW SECTION

WAC 173-539A-990 Appendix 1--Map of upper Kittitas County boundaries.

**BOUNDARY MAP:
UPPER & LOWER KITTITAS COUNTY**

